

Office of the Chapter 13 Standing Trustee

Isabel C. Balboa, Chapter 13 Standing Trustee†

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January 3, 2023

The Honorable Andrew B. Altenburg, Jr.
United States Bankruptcy Court
P.O. Box 2067
Camden, New Jersey 08102

**RE: Chapter 13 Bankruptcy
Case No. 22-12461 (ABA)
Debtor(s) Name: Timothy M. Myers**

Dear Judge Altenburg:

Please accept this letter in lieu of a more formal response and in opposition to Debtor's Motion to Reopen Case and Vacate Dismissal Order, which is returnable on January 10, 2023, at 11 a.m.

Debtor filed his second¹ Chapter 13 Petition on February 4, 2020, with the assistance of Andrew T. Archer, Esquire. The Court assigned case number 20-11897 (ABA). The plan proposed payments of \$1,187 for sixty (60) months to pay administrative fees of \$4,093; State of New Jersey for \$10,000; Internal Revenue Service for \$25,000; mortgage arrears to Flagstar for \$19,000; PHH Mortgage for \$6,000; and zero percent to the unsecured creditors who timely filed a proof of claim. At the third listing for confirmation, the Trustee recommended dismissal. The Court entered an Order Dismissing Debtor's case on August 13, 2022, for failure to file required schedules, statements, plan and/or summary; make all pre-confirmation payments to the Trustee; failure to provide all documents to the Trustee; failure to complete business debtor forms; and failure to resolve objection by creditor.

Debtor filed his third Chapter 13 Bankruptcy Petition on October 28, 2020, with the assistance of Andrew T. Archer, Esquire. The Court assigned case number 20-22099 (ABA). The plan proposed payment of \$3,160 for sixty (60) months to pay administrative fees of \$4,093; Internal Revenue Service for \$69,862.83; mortgage arrears to Lakeview Loan for \$38,474.46; mortgage arrears to First Colonial Bank for \$14,934.57; mortgage arrears to PHH Mortgage for \$30,585.52; Internal Revenue Service for \$9,553; and base dividend of \$3,105 to the unsecured creditors who timely files a proof of claim. At the fifth listing for confirmation, the Trustee recommended dismissal. The Court entered an Order Dismissing Debtor's case on August 26, 2021, for failure to make all pre-confirmation payments to the Trustee; failure to provide all documents to the Trustee; failure to complete business debtor forms; and failure to resolve objection by Trustee and/or creditor.

Debtor filed his fourth, and most recent Chapter 13 Petition, on March 29, 2022, with the assistance of Andrew T. Archer, Esquire. The plan proposes payment of \$1,996 for sixty (60) months to pay administrative fees of \$4,100; Internal Revenue Service and State of New Jersey;

¹ Debtor filed his first case on Monday, December 29, 2008. The court assigned case No. 08-35772 (ABA).

mortgage arrears to NewRez, LLC for \$40,000, First Colonial Community Bank for \$57,558.85; and a base dividend of \$6,106 to the unsecured creditors who timely file a proof of claim.

Debtor appeared at the Section 341(a) Meeting of Creditors on June 2, 2022, which was conducted by William H. Clunn, III, Esquire, Staff Attorney for Isabel C. Balboa, Chapter 13 Standing Trustee. Kenneth Borger, Esquire appeared on behalf of the Debtor. At the meeting of creditors, Debtor was advised to file a modified plan addressing the treatment of creditors, and to amend the petition and schedules. Debtor was also advised to submit documents to the Trustee, including the 2020 and 2021 tax returns as well as missing business documents. On June 15, 2022, the Trustee filed an objection to Debtor's plan (Doc No. 21).

At the third listing for confirmation, the Trustee recommended dismissal, but agreed to hold the order 10 days for significant progress on documents. On September 27, 2022, the Court entered an Order of Dismissal for failure to file required schedules, statements plan and/or summary; failure to make all required pre-confirmation payments to the Trustee; failure to complete business debtor forms; and failure to resolve objections by Trustee and Creditor.

Debtor comes before the Court on a motion to reopen case and to vacate dismissal order stating that he will have funds of \$13,792 for the Trustee and will provide required documents to the Trustee. Debtor also states that he will be filing a motion allowing for payment directly to the Internal Revenue Service and State of New Jersey outside of the plan.

By the return date of the motion, Debtor will be \$15,968 in plan arrears. Although Debtor certifies in his motion to vacate that a motion to allow for payment directly outside of the plan to the Internal Revenue Service and State of New Jersey will be filed to make plan feasible, Debtor's plan remains unfeasible. To pay the remaining claims through the plan, Debtor would need \$2,512 for the remaining fifty-one (51) months of the plan. Debtor's Schedule J filed on March 29, 2022, reflects net income of \$1,999.30. Schedule J only provides for payment of \$1,140 for his Chapter 11 plan payment. Debtor testified that the payment amount is \$3,000, a difference of \$1,860. Schedule J, Line 16 also lists installment payments to Internal Revenue Service and State of New Jersey for a total of \$300. However, payments will increase on February 10, 2023, for an additional \$795.

The Trustee requests Debtor's motion be denied. The Trustee respectfully requests if the Court grants Debtor's motion, the Debtor be required to submit an amended Order to the Judge's chamber to include the following language:

1. Debtor shall forward \$13,792 to the Chapter 13 Trustee within ten (10) days of the date of this Order;
2. Debtor shall provide to Trustee within ten (10) days of this Order:
 - a. Proof of payment for car from son and the corresponding contribution letter;
 - b. Homeowners Insurance for Elm Avenue;
 - c. Certification of Debtor for Snow Removal;
 - d. License for Area 51 Lawn and Landscaping, LLC;
 - e. Profit and Loss for Snow Removal dated 3/1/2021-2/28/2022;
 - f. Amend Vol. Petition, Need # related to Chapter 11 case;
 - g. Amend Schedule A/B, D, add 2017 Ford F-450, add Kubota property (not currently on Schedule B/C), add federal tax refund for 2021, add state refund

- for 2021;
- h. Amend Schedule J (testified that Chapter 11 payment is \$3,000);
 - i. Prove feasibility;
 - j. Amend 122C-2 (correct vehicle payments which do not last sixty (60) months)
 - k. File a modified plan to treat US HUD SPOC, treat IRS secured and priority POCs, treat Kubota Credit Corp, NJ secured and priority POC, and provide for step plan payment when various financed vehicles are paid off.
3. Debtor shall submit all future payments to the Trustee via w/o or TFS;
 4. Debtor shall within fifteen (15) days file a motion to approve payment outside the Debtor's Chapter 13 plan to Internal Revenue Service and State of New Jersey;
 5. Should Debtor fail to comply with the terms of this Order, Debtor's case shall be dismissed upon the receipt of certification by the Trustee of such non-compliance filed with the Court and served upon Debtor.

As always, the Court is welcome to contact the Trustee with any concerns.

Respectfully submitted,

/s/ Jennifer R. Gorchow
Jennifer R. Gorchow, Staff Attorney for
Isabel C. Balboa
Chapter 13 Standing Trustee

JRG/kt

cc: Andrew T. Archer, Jr. (Via CM/ECF)
Timothy M. Myers (Via Regular Mail)